REMARKS

Claim 1 has been amended to more particularly point out and distinctly claim the present invention. The air channel is designated by the numeral 25 and the climate channel is designated by the numeral 26. These amendments overcome the Examiner's objections identified in paragraph 1 of the Office Action. Claim 21 has been rewritten in independent form to include the substance of Claim 1. The climate channel constructions of Claims 21 and Claims 22 and 23, which depend therefrom, are not taught in the prior art. Claims 18-20 were previously cancelled. Claims 1-17 and 21-23 remain for consideration in this application.

Claims 1, 3, 5-7, 10-12, 14, 16, and 17 have been rejected as being anticipated by Lambertz 6,286,151. Applicant submits that each of the claims remaining in this application patentably distinguishes over Lambertz. Claim 1 recites that the sock has a foot portion and a shaft portion. The foot portion has a toe area, a heel area and a tread area between the toe area and the heel area. As clearly seen in the drawing, the tread area is on the bottom of the sock. The sock has an air channel (25) extending from the shaft portion to the tread area and at least one climate channel (26) in the tread area (13) communicating with the air channel (25) for removing moisture from the tread area when the sock is worn for athletic activities. A close examination of the Lambertz patent reveals a climate-adjusting sock which has an air channel 3 proceeding from the sole 2 of the foot up to the band 4 and which is formed of climate-adjusting net-type knit fabric (col. 2, lines 35-42). In the interior, the sock 1 is provided with a padded instep cushion or padding 5 and in the area of the shin it is provided with a padded shin cushion 6 (col. 2, lines 45-50). The area of the Achilles tendon is protected by means of padded cushions

7 (col. 2, lines 54, 55). The area of the calf is also provided with padded cushions whereby, in the example shown, rod-type paddings 8 are provided (col. 2, lines 62-64). The sock is also provided with an X-cross support band (col. 3, lines 1-3). The sole 2 of the sock 1 is equipped with additional padded cushions or paddings 10 and 11, particularly, in the area of the ball of the foot and/or in the area of the toes (col. 3, lines 6-10). Please note that paddings 10 and 11 are not channels. Additional support bands may be arranged in the area of the ankle, namely, a ring-type support band 12 above the ankle and below that, an additional support band 13. It is possible to provide another diagonal support band 14 (col. 3, lines 28-32). Please note that the bands 13 and 14 are not channels.

Comparing the sock of the Lambertz patent with the sock of the present invention, it is seen that the present invention is not disclosed by Lambertz. There is no teaching in Lambertz of a climate channel in the tread area of the sock. Lambertz discloses the arrangement of an air channel proceeding from the sole of the foot up to the band area of the sock, but fails to arrange one or more climate channels in the tread area of the sock which are connected to the air channels. Therefore, the Lambertz patent is not able to promote the conveying of moisture that occurs in the area of the sole. The Lambertz patent does not anticipate Claim 1. Claims 3, 5-7, 10-12, 14, 16, and 17 are based upon 1 and should be allowed together with Claim 1.

Claims 2, 4, 8, 9, 13, 15, and 21-23 were rejected as being unpatentable over Lambertz in view of Dahlgren under 35 U.S.C. 103 (a). The moisture management sock of Dahlgren is constructed predominantly of hydrophilic yarn except for a series of hydrophobic rings of yarn alternating with a series of hydrophilic rings of yarn in the foot portion of the sock. The sock has

the following yarn zones: (i) a first zone 11 at the toe of the sock where the yarn is predominantly hydrophilic, (ii) a second zone 12 ranging from the open end in the leg portion to the instep (and including the heel) of the sock where the yarn is predominantly hydrophilic, and (iii) a third zone 13 at the ball of the foot between the first and second zones where the yarn is woven in alternating rings of hydrophobic and hydrophilic yarn (col. 2, lines 52-64). Moisture absorbed from the wearer's foot by the yarn at the first zone is transferred by wick action to the yarn at the third zone, for removal by evaporation in the second zone. The yarn in the first, second, and third zones have lower sections engageable with the bottom of the wearer's foot. The lower sections have the form of a cushioned terry knit. Also, the yarn in all three zones preferably includes synthetic resin binder yarn for form and fit and to serve as a backing for the terry knit; and the yarn at the first and second zones preferably includes hydrophilic yarns, such as cotton, in an amount between 50 and 100 per cent of the total yarn in the first and second zones. The synthetic resin typically comprises Nylon. Considering that the sweat glands of the foot are concentrated at the toe and the heel areas, Dahlgren provides that the following qualities are taken into account and: (1) Evaporation–Acrylic (such as Creslan or Orlon) is preferably employed as a component of the hydrophobic yarn or yarns, for evaporative, transference of moisture, fit and good adherence. (2) Absorption and Comfort–Wool or cotton is employed as the hydrophilic yarn due to its ability to absorb a large percentage of its weight in moisture (wool 12-13%; cotton 6-7 %); also, such yarns do not irritate the skin and are not clammy or sticky, and each is "breathing" fabric that does not create or concentrate heat, and it can be easily sanitized. The acrylic or hydrophobic yarns are not used in predominance throughout the sock in order to

obtain maximum moisture absorptive qualities and the benefits of hydrophilic yarns without creating or concentrating heat, as in related moisture (col. 2, line 65 - col. 3, line 28).

The alternating hydrophobic and hydrophilic rings create a push-pull effect (i.e., capillary action), which effectively and rapidly draws moisture from the hydrophilic yarn in the first zone 11 to the hydrophobic rings. This creates an effect similar to the wick and flame of a lantern, where the flame draws the kerosene through the wick to the area of combustion. Heat from the foot that comes into contact with the hydrophobic rings in the third zone 13 acts as the wick by absorbing and serving as a conduit for the moisture (col. 3, lines 29-38).

Since the hydrophobic rings are enclosed in the shoe, evaporation is prevented at this point. Typical dress and sport casual socks do not have venting holes proximate to the third zone to allow for evaporation. Thus, the moisture continues to travel toward the evaporation area 44 in the leg of the sock in the second zone 12 outside of the shoe 42 (col. 3, lines 39-44).

The rings reduce the amount of hydrophobic yarn required to wick the moisture, which reduces the heat retentiveness of the sock, without significantly reducing the ability of the sock to wick and evaporate moisture. The hydrophilic rings reduce the heat retentiveness in the third zone 13 by replacing heat retentive hydrophobic yarn with "breathing" hydrophilic yarn. Thus, the use of alternating hydrophobic and hydrophilic rings reduces the temperature inside a surrounding shoe (col. 3, lines 45-53).

Comparing the sock of Dahlgren with that of the present invention, it can be seen that the technical features are different. First, Dahlgren does not teach the use of any kind of channel and certainly not an air channel that extends from the sole up to the cuff of the sock. Dahlgren uses

rings and there is no indication in Dahlgren that the rings 33 are the same or similar to the climate channels 26 of the present invention. The rings only create a wick action to transfer the moisture to the leg portion. Second, in Dahlgren, moisture is transported axially from the toe portion 21 along the foot portion 10b to the leg portion 10a. In contrast in the present invention the climate channels 26 transport moisture to the connected air channels 25 up to the band 21.

Since Lambertz does not disclose channels in the tread area of the sock and Dahlgren does not disclose channels, but rings, that are crossed by moisture but not through which moisture flows, the combination of the cited art would not produce the present invention. The present invention is able to create an air circulation in the shoe because of the connection of the air channels 25 and the climate channels 26. This circulation improves the climate within the shoe. Therefore, the sock of the present invention not only enables moisture to escape from the shoe, but to supply fresh air into the shoe and into the tread area. Further, given a realistic appraisal of the teachings of the Lambertz patent and Dahlgren, there is no reason to combine the two patents. Even when combined as proposed by the Examiner the present invention would not result.

Applicant submits that the Examiner has not met her burden of presenting a prima facie case of obviousness. When the scope and content of the prior art are properly considered, it is evident that the differences between the prior art and the claims in this application are such that a person skilled in the art would not reasonably combine the references as was done by the Examiner.

Claims 2, 4, 8, 9, 13, 15, and 21-23 are considered to be patentable over the combination of Lambertz and Dahlgren for the reasons stated above.

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As previously noted, patents based upon applications corresponding to the present application have been granted in Australia (AU 2004206701B2) and China (ZL200480002550). Further, counsel has been informed that the corresponding European Patent Office Application has been patented (EP1585397). While it is recognized that different standards may be applicable to patentability in different jurisdictions, the patent standards in the European Patent Office are high. The claims of the European Patent are broad. The fact that three patents have now been granted lends credence to applicant's arguments that the present invention is both novel and patentable.

Applicant requests that he be given an opportunity to interview the Examiner in connection with this application before a further Office Action is issued, in the event that this amendment does not place the application in condition for allowance.

Favorable reconsideration and allowance of the present application are solicited.

Respectfully submitted,

Date: April 30, 2009

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this Amendment After Final Rejection is being transmitted by facsimile to Fax No. 571-273-8300 on April 30, 2009

By Seymour Rothstein
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